ATTORNEY DOCKET NO. 05146.0003U2
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	)	
	)	
Loessner *et al.*	)	Art Unit: 1657
	)	
Application No. 10/516,507	)	Examiner: Singh, Satyendra K
	)	
Filing Date: December 1, 2004	)	Confirmation No. 5123
	)	
For: VIRULENT PHAGES TO CONTROL LISTERIA MONOCYTOGENES IN FOODSTUFFS AND IN FOOD PROCESSING PLANTS	)	

RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP AMENDMENT
Commissioner for Patents
Alexandria, Virginia 22313

NEEDLE & ROSENBERG, P.C.
Customer Number 23859

Sir:

This is in response to the Office Action dated January 17, 2007, wherein restriction of the claims of the above-identified application is required. The Office Action requires restriction to one of the following five groups of claims:

Group I: Claims 49-66 and 69, drawn to a composition comprising phage P100 and method of using said composition for controlling *Listeria* contamination.

Group II: Claims 67 and 68, drawn to a second method of using phage P100 for treating an animal infected with *Listeria monocytogenes*.

Group III: Claims 70-81 and 94-95, drawn to a third method of using phage P100 for detecting the presence of *Listeria monocytogenes*.

Group IV: Claims 82, 89, and 90-93, drawn to a second product, purified endolysin protein derived from phage P100.

Group V: Claims 83 and 84-88, drawn to a method of using purified endolysin protein derived from phage P100.

As required in response to the Restriction Requirement, Applicants provisionally elect Group I (claims 49-66 and 69) with traverse.

37 C.F.R. § 1.475 provides that national stage applications shall relate to one invention or to a group of inventions so linked as to form a single general inventive concept. Such inventions possess unity of invention. The Examiner proposes that the groups of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1; however the Examiner has provided no basis for this determination. Instead, the Examiner argues that the groups of inventions (I-V) do not fall under any of the categories mentioned in rule 37 C.F.R. § 1.475(b). The Applicants note, however, that 37 C.F.R. § 1.475(b) states that "claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations [emphasis added]." Rule 37 C.F.R. § 1.475(b) does not say that claims not falling within the listed categories requires or establishes a lack unity of invention. Rule 37 C.F.R. § 1.475(c) emphasizes this point, stating that "if an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present [emphasis added]." Again, the rule does not state that unity of invention would not exist, but rather that there was no guarantee it did exist.

PCT Rule 13.2 states:

> ... the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Applicants note that all of the claims of at least Groups I, II and III relate to the special technical feature phage P100, while Groups IV and V relate to a protein derived from phage P100. MPEP 1850 states that "[w]hether or not any particular technical feature makes a

"contribution" over the prior art, and therefore constitutes a "special technical feature," should be considered with respect to novelty and inventive step." Applicants respectfully point out that the Examiner has not provided any evidence that any disclosure exists in the art that would destroy the novelty or inventive step of this common technical feature (i.e., phage P100) and thereby destroy the single inventive concept. Thus, the Examiner has not met the burden for establishing a lack of unity of invention and the restriction is improper.

For the above reasons, reconsideration or withdrawal of the restriction requirement is respectfully requested.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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Brian Giles
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2/16/07
Date